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Attorneys for Plaintiff  
6 KEYSTONE STRATEGY, LLC.

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION

10  
11 KEYSTONE STRATEGY, LLC,  
12 Plaintiff,  
13 v.  
14 GERAWAN FARMING, INC.,  
15 Defendants.  
16

Case No.:

**COMPLAINT**

**JURY TRIAL DEMANDED**

17  
18 **PRELIMINARY STATEMENT**  
19

20 KEYSTONE STRATEGY, LLC ("Keystone" or "Plaintiff"), for its Complaint against  
21 GERAWAN FARMING, INC. ("GFI" or "Defendant"), states as follows:

22 1. This lawsuit brings claims arising out of Gerawan's breach of contract for its failure to  
23 pay the professional fees owed to Keystone with respect to its services provided in support of a prior  
24 litigation.  
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**PARTIES**

2. Keystone is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in Cambridge, Massachusetts.

3. On information and belief, GFI is a corporation duly organized and existing under the laws of the State of California, with its principal place of business in Fresno, California.

**JURISDICTION**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because complete diversity exists between the Plaintiff and the Defendant, and the amount in controversy exceeds \$75,000, exclusive of prejudgment interest and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because this is a judicial district in which a substantial part of the events or omissions giving rise to the claims occurred, and pursuant to Cal. Code. Civ. P. § 395.5 because the contract largely was performed, the obligation arose, and the breach occurred in this judicial district. Keystone maintains an office in Brisbane, California, within this judicial district, and GFI and its representatives traveled there for the initial meeting that led GFI to engage Keystone, and traveled there for several other in-person meetings during the course of the engagement; additionally, a significant amount of the work performed and for which GFI has not paid occurred in the Keystone Brisbane office.

6. This Court has personal jurisdiction over the Defendant because it is a resident of the State of California.

**STATEMENT OF FACTS**

**I. GFI Contracted with Keystone to Provide Consulting Services.**

7. In 2010, GFI filed a malpractice lawsuit against its former attorneys in the matter styled, *Gerawan Farms v. Townsend and Townsend*, based on their alleged improper prosecution of a nectarine tree patent by including the “Prima” trademark in the patent name.

1           8.       GFI's legal counsel in the *Townsend* lawsuit was Rummonds Thornton, LLP (the  
2 "Rummonds Firm").

3           9.       In September 2014, on behalf of GFI, members of the Rummonds Firm traveled to  
4 Brisbane, California to interview and meet with Keystone, which GFI was considering engaging as a  
5 consulting firm to support the litigation.

6           10.      After being informed that GFI wished to proceed with Keystone, on December 15,  
7 2014, Keystone sent to the Rummonds Firm and to Mike Mallery, the General Counsel of GFI, an  
8 engagement letter containing the terms of the engagement.

9           11.      On January 14, 2015, Mallery executed the engagement letter, indicating he "AGREED  
10 AND ACCEPTED" the terms thereof on behalf of GFI (thereafter, the "Engagement Agreement"). A  
11 true and correct copy of the Engagement Agreement is attached hereto as Exhibit A.

12           12.      The Engagement Agreement provides that "All work will be performed under the  
13 direction of Rummonds Thornton" and that Keystone's analysis would be "independent and  
14 objective."

15           13.      The Engagement Agreement further provides that Keystone was to be paid for the "time  
16 actually spent" working on the engagement, and that it would invoice the work monthly for counsel's  
17 review and for payment by Gerawan.

18  
19  
20           **II. Keystone Provided the Consulting Services, But GFI Stopped Paying.**

21           14.      Keystone provided consulting services through the successful settlement of the  
22 *Townsend* litigation in 2016.

23           15.      For the invoices covering the "time actually spent" by Keystone from December 2014  
24 through June 2015, Keystone issued its invoices, the Rummonds Firm and Gerawan reviewed the work  
25 and the invoices, and — endorsing both — Gerawan paid for the Keystone work directed by its  
26 counsel and the time Keystone spent doing so.  
27  
28

1           16.     The Rummonds Firm and Gerawan continued to request and direct additional Keystone  
2 work after June 2015, and Keystone continued to perform the services as requested.

3           17.     However, Gerawan stopped making payments and did not pay for all Keystone “time  
4 actually spent” performing services through the successful settlement of the *Townsend* litigation in  
5 2016.  
6

7           18.     The total amount of Keystone work and expenses that Gerawan has not paid for exceeds  
8 \$90,000.  
9

10                                   **COUNT I**  
11                                   **(Breach of Contract)**

12           19.     Plaintiff repeats and realleges the allegations in paragraphs 1 through 18 of the  
13 Complaint as if fully set forth herein.

14           20.     The Engagement Agreement executed between Keystone and GFI constitutes a valid  
15 and binding contract.

16           21.     Keystone performed all of its obligations under the terms of the contract.

17           22.     GFI has breached the contract by failing to pay Keystone for the “time actually spent”  
18 performing services thereunder, as reflected on the invoices sent to GFI and its counsel.

19           23.     GFI’s breach has caused Keystone to suffer monetary damages, including the amounts  
20 invoiced and interest on each unpaid invoice, in an amount to be proven at trial.  
21

22                                   **JURY DEMAND**

23           24.     Plaintiff demands that a jury try this matter.

24                                   **PRAYER**

25           WHEREFORE, Plaintiff prays for judgment in its favor and against GFI in the amount of any  
26 and all costs, damages, and liabilities; for interest; and for such other relief as the Court may deem  
27 appropriate.  
28

1 Dated: September 14, 2016

MURPHY, PEARSON, BRADLEY & FEENEY

2  
3  
4 By /s/ Thomas J. D'Amato  
Attorneys for Plaintiff

EXHIBIT A



December 15, 2014

James Rummonds  
RUMMONDS | THORNTON, LLP  
311 Bonita Drive  
Aptos, CA 95003

EXHIBIT 216 PLTF. DEFT.  
WITNESS DAVID FRANKLYN  
CONSISTING OF 3 PAGES  
DATE 9-1-15  
BEHMK REPORTING AND VIDEO SERVICES, INC.

Mike Mallery  
General Counsel, Gerawan Farms

**Re: Gerawan Farms v. Townsend and Townsend**

Dear Jim & Mike:

Thank you for selecting Keystone Strategy ("Keystone") to provide consulting services on behalf of your client, Gerawan Farms ("Gerawan") in connection with the legal and administrative proceedings involving the case *Gerawan Farms v. Townsend and Townsend*.

All work will be performed under the direction of Rummons Thornton ("Rummons Thornton" or "Counsel"). Keystone understands that Counsel is interested in obtaining Keystone's consulting analyses. In addition, Keystone understands that Keystone is providing to Counsel the independent and objective analysis as well as expert testimony of Professor David Franklyn.

Keystone understands that its work product under this arrangement is being prepared in anticipation of litigation and agrees that all communications between Keystone, Gerawan and/or Counsel, as well as the engagement itself, will be treated as privileged and confidential. Unless otherwise agreed, any reports, memoranda, or other documents we prepare in connection with this matter will be directed to you and will be clearly labeled, "ATTORNEY-WORK PRODUCT/PRIVILEGED AND CONFIDENTIAL." All such reports and other documents and materials that are prepared by Keystone in connection with this matter will remain or become the property of Counsel and will be segregated and maintained in secure and separate files so that the confidentiality of these matters can be maintained. No disclosure of any such materials will be made to third parties unless disclosure to that person has been authorized by Counsel, a court has directed us to do otherwise, or other lawful process has directed us to do otherwise and we have afforded Counsel and/or Gerawan a reasonable opportunity to oppose disclosure. Keystone will only undertake work specifically authorized by Gerawan and/or Counsel. All of Keystone's work product is to be used only in connection with this engagement and may not be published or used in any other manner without the written consent of Gerawan.

San Francisco  
2000 Sierra Point, 7<sup>th</sup> Fl.  
Brisbane, CA 94005  
650.873.2359

Boston  
150 Cambridgepark Dr., 7<sup>th</sup> Fl.  
Cambridge, MA 02140  
617.649.2285

New York  
113 Spring St., 3<sup>rd</sup> Fl.  
New York, NY 10012  
212.381.0731

CONFIDENTIAL - ATTORNEYS EYES ONLY

GF531426

Keystone Strategy Engagement Letter  
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Anything to the contrary notwithstanding, all methodologies, procedures, management tools, software, data files, concepts, ideas, inventions, know-how reports, documents, materials and other intellectual capital that we have developed, created or acquired prior to performing the above-described services are and shall remain our sole and exclusive proprietary property, and neither you nor your client shall have or acquire any right, claim, title or interest in or to any such intellectual capital.

### **Fee and Billing Arrangement**

Our fees are based upon the time actually spent by each assigned staff member at their standard billing rate, on an hourly basis. Expert David Franklyn's hourly billing rate is \$650 per hour. Keystone hourly billing rates for its professionals are as follows:

<b>Position</b>	<b>Experience</b>	<b>Rate</b>
Partner/VP, Engineering	Ph.D, MBA, JD, decades plus of industry, economics, and IP experience	\$450 - \$525
Sr. Economist, Associate Partner	Ph.D, MBA, JD, 12+ years economic or technology industry consulting experience.	\$425
Sr Manager	MBA, Ph.D or JD. 7-12 years industry or technology, development or economic consulting experience.	\$375
Manager, Consultant, Economist	MBA, PHD, 4-7 years of consulting experience or equivalent software industry experience	\$335
Senior Data Analyst	MS, Engineering/CS/Economics or BA with 2+ years of industry and economic consulting experience.	\$235
Data Analyst	BA Economics, BS, MS 1-3 years of experience	\$195

Rates are adjusted at least annually to reflect market changes and/or promotions to more senior levels within our organization. Rates of any expert witnesses hired in connection with the matter vary and will be discussed in advance. We represent and agree that the hourly rates we charge you are and will remain at least as favorable as those charged other Keystone clients for litigation consulting services.

In addition to the professional fees, our bills will include out of pocket expenses, such as travel and case-specific materials that we incur on your behalf. We agree to seek advance approval of any expenditure exceeding \$5,000.

Keystone will present invoices to Rummons Thornton monthly. We agree that our invoices will contain sufficient detail to allow an understanding of the tasks performed by each timekeeper by date, and to supply such supporting expense documentation as Gerawan may reasonably require. We understand that Banner will promptly pass along our invoices to Gerawan for payment within 30 days. Banner will pay Keystone on receipt of payment from Gerawan. Although Banner is responsible for the retention of Keystone, Gerawan is the sole party responsible for payment of the fees incurred by Keystone.



Keystone Strategy Engagement Letter  
*page 3 of 3*

**Project Administration**

The Keystone project team will be led by Jeff Marowits and Samantha Price, and will include other Keystone professional and administrative staff resources as required. It may be necessary for us to assign additional staff to this project in order to match properly experience and training with the project's requirements. If such is the case, we will notify you of any staffing and billing changes and seek your prior approval.

During the pendency of our engagement, we will not accept without your prior, written approval any engagement of any description that is adverse to Gerawan or that is by or on behalf of any party that is, or has been, adverse to Gerawan in the litigation that is the subject of our engagement.

Thank you for allowing us to assist you in this matter. If this letter correctly states our arrangements, please sign one copy and return it to me.

Sincerely,

Jeff Marowits  
On behalf of Keystone Strategy LLC

AGREED AND ACCEPTED:

By: \_\_\_\_\_  
Mike Mallery, General Counsel for Gerawan

Dated: \_\_\_\_\_

Keystone Strategy Engagement Letter  
page 3 of 3

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Thank you for allowing us to assist you in this matter. If this letter correctly states our arrangements, please sign one copy and return it to me.

Sincerely,

Jeff Marowits  
On behalf of Keystone Strategy LLC

AGREED AND ACCEPTED:

By: Mike Mallery  
Mike Mallery, General Counsel for Gerawan Farming, Inc.

Dated: 1/14/15